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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/061,944	02/01/2002	Thomas J. Schall	019934-003210US	8775

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EXAMINER	
LE, EMILY M	

ART UNIT	PAPER NUMBER
1648	

DATE MAILED: 11/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/061,944	SCHALL ET AL.	
	Examiner	Art Unit	
	Emily Le	1648	

-- Th MAILING DATE of this communication appears on th cover sh et with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) 1-62 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) 1-62 are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-10, drawn to an apparatus for collection of cytomegalovirus comprising a collector and a circuit, classified in class 604, subclass 6.11.

II. Claims 11-22, drawn to a device for collecting cytomegalovirus comprising a support and a compound, classified in class 604, subclass 5.01.

III. Claims 23-31, drawn to a method for collecting cytomegalovirus from a patient by inserting a support comprising a compound, classified in class 601, subclass 93.01.

IV. Claims 32-42, and 44-46, drawn to a method for collecting cytomegalovirus from a patient by contacting patient's blood with a compound, classified in class 604, subclass 5.04.

V. Claims 32, 37, 43, and 44-46, drawn to a method for collecting cytomegalovirus from a patient by contacting patient's skin with a compound, classified in class 604, subclass 290.

VI. Claims 47-59, drawn to a method for assessing mutations in cytomegalovirus by contact the patient's blood with a compound, classified in class 435, subclass 5.

VII. Claims 47, 60-61, drawn to a method for assessing mutations in cytomegalovirus, further comprising a determination of whether the

mutation confers resistance to a pharmaceutical agent, classified in class 435, subclass 5.

VIII. Claims 47 and 62, drawn to a method for assessing mutations in cytomegalovirus by contacting the patient's skin with a compound, classified in class 604, subclass 358.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of Groups I-II and IV-VI are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)).

Groups I-II are inventions that relates to an apparatus or a device. Group I differ from Group II in the materials used in each inventions.

Groups IV-VI are inventions that relates to a process of using the apparatus or device of Group I or Group II. Groups IV-V are directed to a process of use for the apparatus of Group I. Group VI is directed to a process of use for the device of Group II.

In this case, another materially different apparatus can practice the process as claimed. For example, the process of Group IV-V can be practiced with the device of Group II instead of the apparatus of Group I. The same is also true for Group VI.

Groups III-VIII are method claims. The groups are related by the general target, cytomegalovirus. Groups III-V, and Groups VI-VIII differ from one to another in their

purpose. The methods of Groups III-V are directed to collecting cytomegalovirus, whereas, the methods of Groups VI-VIII are directed to assessing mutations in cytomegalovirus.

Group III differ from that of Groups IV-V in method steps. Group III is drawn to a method for collecting cytomegalovirus from a patient by inserting a support comprising a compound, whereas Groups IV-V are directed to a method of collecting cytomegalovirus by contact the patient with a compound.

Groups IV-V differ one from the other in method steps. Group IV is directed a method for collecting cytomegalovirus from a patient by contacting patient's blood with a compound, Group V is drawn to a method for collecting cytomegalovirus from a patient by contacting patient's skin with a compound.

Groups VI-VIII differ from one to the other in method steps, effect, and materials. Group VI is drawn to a method for assessing mutations in cytomegalovirus by contact the patient's blood with a compound, Group VII is directed to a method for assessing mutations in cytomegalovirus, further comprising a determination of whether the mutation confers resistance to a pharmaceutical agent, and Group VIII is drawn to a method for assessing mutations in cytomegalovirus by contacting the patient's skin with a compound.

3. Because these inventions are distinct for the reasons given above and the search required for one group is not required for the other, restriction for examination purposes as indicated is proper.

4. This application contains claims directed to the following patentably distinct species of the claimed invention: The compound recited in claims 7,8, 19-20, 26-27, 39-40, 50-51, and 56-57; claims 9, 21, 28, 41, 52, and 58; and claims 10, 22, 29, 42, 53, and 59.

5. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 11, 23, 32, and 47 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emily Le whose telephone number is (703) 305-4452. The examiner can normally be reached on Monday - Friday, 8 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on (703) 308-4027. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0169.

E.Le

HANKYEL T. PARK, PH.D
PRIMARY EXAMINER